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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ANIBAL RODRIGUEZ, SAL CATALDO,
JULIAN SANTIAGO, and SUSAN LYNN
HARVEY, individually and on behalf of all
others similarly situated,

Plaintiffs,

vs.

GOOGLE LLC,

Defendant.

Case No.: 3:20-cv-04688-RS

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION TO EXCLUDE
CERTAIN OPINIONS AND TESTIMONY
OF GOOGLE'S EXPERTS DONNA
HOFFMAN, JOHN BLACK, AND
CHRISTOPHER KNITTEL**

The Honorable Richard Seeborg

[PROPOSED] ORDER

Before the Court is Plaintiffs’ Motion to Exclude Certain Opinions and Testimony of Google’s Experts Donna Hoffman, John Black, and Christopher Knittel. Having considered the parties’ papers in support of and in opposition to Plaintiffs’ Motion, and all other matters properly considered by this Court, the Court **GRANTS** Plaintiffs’ Motion.

Accordingly, Dr. Hoffman will not be permitted to offer expert testimony regarding Google’s, app developers’, users’, or any other person’s motive, intent, or state of mind, which exceeds the bounds of expert testimony. *See, e.g.*, Hoffman Rep. ¶¶ 26, 32, 63, 116, 132, 153 tbl. 8, 167; Hoffman Supp. Rep. ¶¶ 10, 20, 44. Dr. Hoffman also will not be permitted to testify about the concept of a “representative user” or that the jury should not “generalize” evidence across the class, which encroaches upon the Court’s role in instructing the jury. *See, e.g.*, Hoffman Rep. ¶¶ 43, 122 tbl. 4, 139 tbl. 6. And because Dr. Hoffman lacks technical expertise or knowledge about how Google treats (s)WAA-off app activity data, she will not be permitted to testify that Google’s disclosures and public representations are accurate. *See* Hoffman Rep. ¶¶ 72, 108, 139 tbl. 6, 173; Hoffman Supp. Rep. ¶¶ 33–35, 47 n.123.

The Court will also preclude Dr. Black from offering testimony that Google’s policies and terms define the phrase “Google Account,” which contradicts this Court’s prior orders and therefore violates law of the case. *See, e.g.*, Black Rep. ¶ 112. Dr. Black also may not testify that Google does not “intercept” (s)WAA-off data, which is both irrelevant and beyond the scope of the report he purports to rebut. *See, e.g.*, Black Rep. ¶¶ 50–54.

Dr. Knittel’s testimony will also be limited at trial. He may not testify that unjust enrichment should be adjusted to account for profits that Google might have earned had it adequately disclosed its allegedly unlawful data collection. Knittel Rep. ¶¶ 70–78. These opinions do not address the profits Google actually made from its unlawful conduct and concern and irrelevant but-for world; they are also unreliable because they are speculative. Similarly, Knittel may not testify that Google might have recouped some of the profits even without relying on

1 (s)WAA-off data to serve and monetize advertisements, as Knittel admits he has no basis for this
2 opinion. Knittel Rep. ¶¶ 79–85.

3 **IT IS SO ORDERED.**

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5 DATED: _____

6 Honorable Richard Seeborg
7 Chief United States District Judge
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